The Role of Ijtihad in Legislation

Authors(s): Ayatullah Murtadha Mutahhari
Translator(s): Mahliqa Qarai



بسم الله الرحمن الرحیم

The Role of Ijtihad in Legislation

:Writer

Murtaza Mutahhari

:Published in print

Almas

:Digital Publisher

Ghaemiyeh center of computerized researches

Contents

The Role of Ijtihad in Legislation

BOOK ID

Authors(s): Ayatullah Murtadha Mutahhari

Translator(s): Mahliqa Qarai

Category: Sunni Shi’a

Journal: Vol.۴, N.۲

Topic Tags: mujtahid ijtihad Akhbarism Imamiyyah Legislation

point

Language

English

Definitions of 'mujtahid' and 'ijtihad'. Ijtihad in Sunni and Shi'i traditions. Akhbarism in .the Imamiyyah Tradition

The Role of Ijtihad in Legislation

point

The terms 'mujtahid' and 'ijtihad' are nowadays among those which have acquired great currency, even sanctity, among the Shi'ah. One would be surprised to know that the term ijtihad was formerly, from the times of the Prophet (S) and for several successive centuries, a Sunni term. It became Shia after undergoing a change of meaning, or what would be more precise to say, the term remained specifically Sunni for several centuries and became 'Muslim', in the wider sense, that is, after undergoing a change of meaning and dissociating itself from its earlier particular .sense

As to its not being a Shi'a term formerly, there is no doubt; if there is any uncertainty, it is about the date of its acceptance by the Shi'ah. It is not improbable that this term

like several groups of people in the seventh century was converted to Shi'ism at the hands of the absolute Ayatullah, al-'Allamah al-Hilli. However, as we shall presently .explain, the conversion came after its undergoing a change of meaning

Apparently, there seems to be no doubt that this term was never used by any of the Imams of the Ahl al-Bayt (A). The terms ijtihad and mujtahid, in the sense in which they are used by

Shi'ah and Sunni fuqaha', have not been used in any of their ahadith. Neither they themselves were ever known by the epithet 'mujtahid' nor did they ever use it for the scholars and legists from among their companions. Otherwise the root relating to such terms as fatwa and ifta, which convey approximately the modern sense of ijtihad, and its derivatives do occur in the ahadith. For instance, al-'Imam al-Baqir (A) :is reported to have said to Aban ibn Taghlib

Sit in the mosque of al-Madinah and give fatwas for the people . Indeed I love more .like you to be seen amongst my Shi'ah

And in a famous hadith, al-'Imam al-Sadiq (A) is reported to have said to 'Unwan al-:Basri

Avoid giving fatwa in the way you would run away from a lion; do not make your neck .a bridge for the people

The reason for the former unpopularity of the word is that during the early centuries of the Islamic era - that is also the period in which the Imams of the Ahl al-Bayt (A) lived - the word, due to the specific meaning it carried, was not acceptable to the Imams (A). Naturally, it could not have played any role in their teachings. However, after undergoing a gradual change of meaning, when it came to be used in a different sense by Sunni fuqaha' themselves, it was also adopted by Shi'ite fiqh. Now we shall .briefly describe the background of the Sunni usage of this term

Ijtihad' in the Sunni Tradition'

Sunni scholars narrate

a hadith that the Prophet (S), while sending Mu'adh to Yemen, asked him as to on what he would base his judgment. “In accordance with the Book of Allah”, replied Mu'adh, “But what if you don't find it there?” inquired the Prophet (S). “According to the Sunnah of the Apostle of Allah”, replied Mu'adh. “But what if you don't find it there .too?” asked the Prophet (S) again. 'I will exert my own opinion', replied Mu'adh

The Prophet (S) put his hand on Mu'adh's chest and said: “Thank God for assisting His Apostle with what he loves.” They have narrated other traditions on the subject to the effect that either the Prophet (S) directly commanded his Companions to exercise ijtihad in case they could not find a rule in the Book and the Sunnah, or to the effect that he approved of the practice of his Companions that practiced ijtihad. To the .('Sunnis, this is something definite, confirmed by consensus (ijma

About the Holy Prophet (S) himself, they have said that some of his injunctions were purely based on personal ijtihad not on revelation. Even in their works on jurisprudence ('ilm al-'usul) the problem is raised whether or not the Prophet (S) could make errors in his personal ijtihad. They have narrated traditions in this regard and transmitted reports of the Companions as to how they justified their own actions or those of others on the basis of ijtihad. We abstain from quoting any of them here for the sake

.of brevity

It is evident that in all the above instances the term ijtihad is not used in its current sense, that is, making the utmost effort in deducing rules of the Shari'ah from the related sources (adillah). The meaning of ijtihad there is 'exercising of one's opinion or judgement' (al-'amal bi al-ra'y). It means that in a case where the Divine dicta are absent or implicit, one should see what would be more acceptable to one's intelligence and taste, or nearer to truth and justice, or analogous to other Islamic .laws, and to adopt it for his judgement

Accordingly, ijtihad is also accounted as one of the sources of Islamic legislation, like the Quran and the Sunnah, although not as a source parallel to these two. So long as a rule is to be found in the Quran and the Sunnah, the need for ijtihad does not arise. However, in absence of relevant dicta in the Quran, the Sunnah or ijma', ijtihad becomes a source of legislation. On this basis, they have said that the sources of .(legislation are four: the Book, the Sunnah, ijma', and ijtihad (i.e. qiyas

Also, according to this approach, ijtihad is not synonymous with expertise in Islamic law (faqahah), nor is the term mujtahid synonymous with faqih. Rather, ijtihad is one of the functions of the faqih. The faqih should have knowledge of the Quran and the hadith corpus; he should be able to distinguish the nasikh from the mansukh, the 'amm from the

.khass, the mujmal from the mubayyan, and the muhkam from the mutashabih

He should be familiar with the Quranic vocabulary and terminology, know the circumstances in which a particular verse was revealed (sha'n al-nuzul), and have knowledge of the successive generations of narrators and transmitters of hadith. He should also be able to reconcile the apparently conflicting traditions. In addition to all that, he should practice ijtihad and exercise his personal judgements in particular .cases

What was the character and basis of that ijtihad? Did the term ijtihad found in hadith mean exercising qiyas? Did the Prophet (S) and his Companions practice ijtihad in this sense. Did it also apply to other practices such as istihsan? Al-Shafi'i, in his famous Risalah, has a chapter on ijtihad, which follows the one on ijma', and is itself followed by one on istihsan. In his discussion of the subject, al-Shafi'i draws the conclusion that the ijtihad prescribed by the Shari'ah is confined to qiyas and that other types of ijtihad, such as istihsan, do not have any canonical grounds. Al-Shafi'i believes that the .canonical grounds for qiyas are identical with those for ijtihad

There were other questions that were debated by Sunni fuqaha', such as: Are ijtihad and al-'amal bi al-ra'y confined to cases where there is no express text (nass) or whether one may do ijtihad (called ta'awwul in this case) and exercise his judgement despite the presence of express texts? What are the conditions applicable to Sunnah if it is to

preponderate ijtihad? Are all traditions narrated from the Prophet (S) to be relied upon and given precedence over ijtihad? Is reliable hadith confined to those which are mashhur and mustafid, as Abu Hanifah believed? Who are those who had the right of ijtihad and whose ijtihad was binding (hujjah) for the others? On what grounds have the others no right to go against their ijtihad? Evidently, to go into the details of each of these questions is outside the scope of this paper. However, it is necessary to :mention some relevant points here

۱. The position of the fuqaha' and imams of the Ahl al-Sunnah with respect to the acceptability of ijtihad, in the above-mentioned sense, is not the same. Some of them give a wider scope to ijtihad and qiyas and some restrict it. Some altogether reject .qiyas and ijtihad

Abu Hanifah, who lived in Iraq and was considered the jurist of the Iraqis, because of the many conditions he required for a tradition to be acceptable, and also on account of being distant from the centre of hadith, which was the Hijaz, had lesser knowledge of hadith. Also due to other reasons, including his background of kalam and logic, he took greater recourse to qiyas and on this account was strongly opposed by the Sunni .jurists of his time and those who came after him

Malik ibn Anas spent his life in al-Madinah and made lesser use of qiyas. Reportedly, he did not use qiyas except in a

few cases, and, according to a report of Ibn Khallikan, was greatly repentant at the time of his death of having taken recourse to qiyas in his fatwas even in those few .cases

Al-Shafi'i, who belonged to the Iraqi school and had studied under Abu Hanifah's pupils and had as well studied under Malik in al-Madinah, took a middle road between .Malik and Abu Hanifah

Ahmad ibn Hanbal was more a muhaddith than a faqih and avoided qiyas even to a .greater extent than Malik Ibn Anas

Dawud ibn Ali al-Zahiri al-'Isfahani, the founder of the Zahiri school, was altogether .opposed to the practice of qiyas and regarded it as an innovation (bid'ah) in the faith

As a consequence of these differences there emerged among the Ahl al-Sunnah two general trends: one of them was represented by the Ahl al-Hadith and the other by the Ahl al-Ra'y. The Ahl al-Hadith, or the Traditionists, attached lesser or no significance to qiyas and ra'y and the Ahl al-Ra'y in turn relied to a lesser extent on .ahadith

Concurrently with the emergence of the Ahl al-Ra'y and the Ahl al-Hadith, a problem .٢ that arose among the contemporary circles of kalam was that of the rational basis of legal judgements (al-husn wa al-qubh al-'aqliyyan). Although at first sight there seems to be no link between these two developments, because one of them belonged to fiqh and took place in juristic circles and the other belonged to the circles of kalam, but, as pointed

by some historians, the theory of rational basis of judgement - which was raised by the Mu'tazilah and who staunchly defended it - was also intended to find some kind of basis for ijtihad, i.e. qiyas and the practice of ra'y.

According to this theory, the laws of the Shari'ah were based on a series of real benefits and harms and that human reason was capable of independently discovering those benefits and harms inherent in things; therefore reason was capable of discovering the purposes and criteria of the laws of religion through ijtihad and ra'y.

This conjecture is further strengthened if we remember that the Ahl al-Hadith, who later, in the fourth/tenth century, came to be known as Asha'riah, represented the chief opposition to the Mu'tazilah.

٣. Right from the first century, from the time when groups of people gathered in mosques for the purpose of study and debate, some persons debated about the issues of halal and haram. They gathered around them pupils and adherents from among the common people, who regarded their fatwas as authoritative and referred to them their questions about halal and haram.

Such was the beginning of the gradual development of a class of scholars who later came to be called fuqaha'. Every region, city and group followed a certain individual, and the rulers had not yet adopted the policy of following the fatwas of a certain jurist as official law.

The emergence of this class of jurists did not require any special conditions. Occasionally,

social conditions demanded that one prominent individual should be recognized by the people and followed in religious precepts. Gradually, this resulted in the emergence of diverse legal approaches and schools, which in turn were preserved and perpetuated by the pupils of the originator after his death. In this way, various legal schools and sects emerged amongst the Sunnis, the most famous of them being .the Hanafi, the Shafi'i, the Maliki, the Hanbali and the Zahiri schools

Of course, the founders of these schools were not the only early jurists and mujtahidun that were there. There were others who held their own legal opinions and were not followers of anyone. However, this independence gradually disappeared after the fourth/tenth century and no independent mujtahid emerged after this time .in the Sunni tradition

Apparently, the last person to have been an independent mujtahid with his own independent approach in legal issues was the well-known historian and exegete Muhammad ibn Jarir al-Tabari (d. ۳۱۰/۹۲۲), who although famous for his work on .history, is considered a Sunni faqih of the first rank

The later Sunni mujtahids were either al-mujtahid al-mutlaq al-muntasib or mujtahid al-fatwa (also occasionally known as mujtahid al-madhhab). 'Al-mujtahid al-mutlaq al-muntasib' means a mujtahid who is attached to one of the well-known schools and follows the juristic approach of its founder but in deducing legal rules, on the basis of the school's juristic principles, he may formulate his own independent legal opinions .which may be different from the legal opinions of the founder

For instance, while being a Shafi'i or a Hanafi in jurisprudence, he may differ with al-Shafi'is or Abu Hanifah's express fatwas in legal matters. A number of eminent Sunni jurists are considered to belong to this class, such as: Imam al-Haramayn al-Juwaym, .Abu Hamid Muhammad al-Ghazali, Ibn al-Sabbagh, and others

Mujtahid al-madhhab' or 'mujtahid al-fatwa' is someone who follows the founder of the school in all matters in which the founder has expressly given his views. However in issues in which he does find an opinion of the founder, he may exercise his own . Ijtihad and give fatwa

Accordingly, Ijtihad is of three kinds: independent Ijtihad, semi-independent Ijtihad (al-'ijtihad al-mutlaq al-muntasib), and Ijtihad within the framework of the juristic and .(legal positions of a school (Ijtihad al-fatwa

In any case, the mujtahids who came after the fourth century did not find any followers. On the other hand the mujtahids who came before this period were not limited to the four imams of the popular schools; there were nine other eminent jurists of whom some lived before the four imams - such as al-Hasan al-Basri - some were their contemporaries - such as Sufyan al-Thawri - and some who came after them - such as Dawud al-Zahiri and Muhammad Ibn Jarir al-Tabari - and all of them .had more or less followers among the people

However, there was a gradual rise in the followers of the four imams, for, according ,to al-Maqfizi in al-Khitat, al-Malik al-Zahir, the ruler of Egypt

officially declared in the year ۶۶۵/۱۲۵۷ that except the four schools - Shafi'i Maliki, Hanafi and Hanbali - other schools had no official recognition and that no judge had the right to give judgement except on the basis of the four schools. The people were also strictly forbidden to follow any except the four schools. This was the beginning of the restriction of the official schools to four.'

This brief description shows that when we talk of the closure of the door of Ijtihad in the Sunni tradition, we refer to the Ijtihad of the first kind, i.e. independent ijtihad. As to the second kind (al-Ijtihad al-mutlaq al-muntasib) and the third kind (ijtihad al-madhhab), their doors have remained open.

Why should the doors of independent ijtihad have been closed after the fourth century and no one should have right to complete independence and be bound to follow one of the imams in jurisprudence? Why and for what reason is it not permissible today to follow anyone except the four imams?

Why should one who follows any one of the imams follow him in all issues and have no right to follow the other three by exercising discretion in some issues? Sunni scholars have given various answers to all of these questions and none of them is convincing.

Shah Wali Allah Dehlawi (d. ۱۱۸۰/۱۷۶۵), in a treatise (risalah) called "al-'Insaf fi bayan sabab al-'ikhtilaf" - which has been quoted by Farid al-Wajdi under jahada in the Da'irat al-Ma'arif, with the remark

that it is the best treatise written on the topic - acclaims the closure of the door of independent ijtihad and the latter scholars' imitation of one of the early imams and says: that is, 'It is a secret that God Almighty has inspired in the scholars with' to safeguard Islam and protect the religion from disintegration. Farid al-Wajdi himself does not approve of the prohibition on Ijtihad and does not confirm those words of .Shah Wali Allah

Two years ago, according to what we have read in papers and have heard, the great 'Allamah Shaykh Mahmud Shaltut, the mufti and rector of Al-'Azhar University, with great courage characteristic of great reformers, broke this thousand-year-old spell and officially announced that the door of ijtihad is open and that there is nothing objectionable about a follower of one school referring to the judgements of another .school in case they are supported by firmer arguments

He also announced in an official fatwa that it is correct to follow the Ja'fari school of fiqh, just like the other schools. Subsequently, a chair of comparative legal studies was established at al-'Azhar. Undoubtedly this was the greatest step that was taken since the beginnings of Islamic jurisprudence for the sake of the benefit and general .welfare of Muslims. Its worth will be better recognized in the future

Another problem related to the subject of Ijtihad is that of takhti'ah (admission of .۴ the possibility of error in the judgements of the mujtahid) and taswib (confirmation

of the mujtahid's infallibility and denial of any possibility of error), which has throughout been a topic of debate in books on kalam and usul al-fiqh. Generally, it is mentioned in books on usul that the Shi'ah fuqaha' admit possibility of error in the mujtahid's fatwas and are accordingly called mukhatti'ah (derived from khata': error), whereas the Sunni fuqaha' believe that the mujtahid is always right in his judgements, .(and are hence called musawwibah (derived from sawab: that which is right

However, it is not the case that all the Sunni fuqaha' support taswib; rather, only a small number of them have accepted this view. In any case, for the Shi'ah, who define Ijtihad as 'the effort to deduce the real law from the sources of the Shari'ah', it is .difficult to imagine that every mujtahid should be always right

It is not possible that whatever any mujtahid may judge should be correct and his judgement should be the real law; for it is possible that different mujtahids may hold divergent opinions simultaneously about a certain subject and the same mujtahid may hold different opinions at different times about the same issue. How is it possible ?that he should always be right

The roots of the theory of taswib lie in a certain theory of Ijtihad which is held by those who define ijtihad as the practice of qiyas and ra'y . They claim that the laws received by the Prophet (S) through revelation are limited, whereas issues and problems which

require legislation are unlimited in number. Therefore, the laws given by the Divine Lawgiver are not adequate to meet the requirements.

Accordingly, God has given the right to the scholars of the Ummah, or a group of them, to employ their personal taste and intelligence in cases where there are no religious dicta and select something which resembles other Islamic laws and is closer to the criteria of justice and truth. In accordance with this reasoning, they accept the theory of taswib, for, according to this view of ijtihad, it is itself one of the sources of the Divine Law.

The idea of taswib was unimaginable to the minds of Shi'ah jurisprudent, because they had taken for granted the principle that every event or problem should have a real Divine law related to it. Ijtihad, to them, meant inquiry and effort to discover that law with the help of reliable canonical sources. Of course, in the light of such an outlook of ijtihad it is impossible that every mujtahid should be right.

The theory of taswib, however, does not rest on such an outlook of Ijtihad. It rests on an outlook which regards it as impossible that God should have legislated laws regarding every kind of situation.

Because, if such were the case, they should have been set forth in the Book and the Sunnah; but the laws given in the Book and the Sunnah are limited in number, whereas situations are innumerable and unlimited. Hence God has given the

ulama' of the Ummah the right to legislate through Ijtihad such laws as have not' been given through revelation. Since this right is God-given, the judgements of the .mujtahid are the actual laws of God

The problem of taswib and takhti'ah has been debated a lot in books on kalam and usul, and here our purpose was just to refer to the above mentioned point. The above discussion related to the Sunni background of the term ijtihad; now we shall turn to the change of meaning that this term underwent, which resulted in its acceptance by .the Shi'ah

Ijtihad' in the Shi'ah Tradition'

Until the fourth/tenth and the fifth/eleventh centuries we observe that whenever the word is used by a scholar it carries the sense of qiyas and ra'y. For instance, Shaykh Abu Ja'far al-Tusi (d. ۴۶۰/۱۰۶۷), in his 'Uddat al-'usul, devotes a chapter to qiyas. He devotes another chapter to Ijtihad where he discusses one of the issues related to ijtihad, i.e. the problem of taswib and takhti'ah. The book has another chapter entitled "Did the Prophet practice ijtihad, and whether it was legitimate for him to practice it? Was it legitimate for the Companions of the Prophet to practice ijtihad when they were away from him or were in his presence?" Later, in the course of his discussion, he says: "This controversy is basically uncalled for according to our doctrines, because, as we have proved earlier, qiyas and ijtihad are absolutely impermissible in " .the Shari'ah

This remark of al-Shaykh al-Tusi shows that

.until his age the word Ijtihad was still used in the sense of ra'y and qiyas

Ijtihad' lexically means 'putting in utmost effort' in doing something. In the earliest' days, the term in accordance with the traditions ascribed to the Prophet (S) and the Companions, was taken to mean ijtihad bi al-ra'y, or putting in utmost effort in the exercise of ra'y and qiyas. However, gradually it took a wider meaning and came to mean putting in utmost effort in discovering the laws of the Shari'ah from its reliable sources. Thus we see that al-Ghazali (d. ۵۰۵/۱ ۱۱۱) in his al-Mustasfa - although he uses :the word recurringly in its earlier sense of qiyas, for instance, when he says

They have differed as to the permissibility of practicing qiyas and ijtihad during the (days of the Prophet ... (vol. ۲, p. ۳۵۴

He also uses it in the general sense of scholarly effort on the part of a faqih

It (ijtihad) means putting in of the utmost effort in doing something. But the term has come to be used in the terminology of scholars specifically for the mujtahids putting in of the utmost effort in acquiring the knowledge of the laws of the Shariah. (vol. ۲, p. (۳۵۰

From this time onwards we see that the term is used less frequently in the special sense of ra'y and qiyas and takes on the sense of scholarly effort in discovering the laws of the Shari'ah. With this change, the term found way into

the Shi'ite fiqh also, for earlier the Shi'ah had opposed it on account of their opposition .to Ijtihad bi al-ra'y, not because they were opposed to scholarly diligence

In any case, they did not resist its use after it changed its meaning. Probably the first to use this term among the Shi'ah Imamiyyah scholars was al-'Allamah al-Hilli (d. ۷۲۶/۱۳۲۶), who accepting it used it in its second sense in his work Tahdhib al-'usul. In that work he devotes a chapter to Ijtihad and uses it in the sense current today. It seems that it was from this time that the Shi'ah accepted the word or the word .embraced Shi'ism

We said earlier that the opposition to qiyas was not limited to the Shi'ah and there were schools among Sunnis who either altogether rejected it and regarded it as a heresy or avoided it as much as possible. The Mu'tazilah, who advanced the doctrine of al-husn wa al-qubh al'aqliyyan, backed qiyas and ra'y in their fight against the Ahl .al-Hadith who rejected it

The Ahl al-Hadith, who later came to be called Asha'irah due to their approach in kalam, rejected the doctrine of al-husn wa al-qubh al-'aqliyyan, claiming that the desirability or undesirability of things is derived from the commands and prohibitions of the lawgiver and not vice versa. As a result, they denied reason any role in legislation of Divine laws. The controversies between the Mu'tazilah and supporters of qiyas and ra'y on one side and the Asha'irah and the

Ahl al-Hadith on the other side revolve around the role of reason and its share in .legislation

It must not be concluded from the above discussion that the Shi'ah opposition to ra'y and qiyas was also based on the same reasons as those of the Asha'irah and the Ahl al-Hadith, which was outright opposition to the role of reason in deduction of the laws .of the Shari'ah. The Shi'i opposition to qiyas and ra'y had two reasons

The first was that the claim of the supporters of qiyas that the Book and the Sunnah are not adequate sources of legislation was not acceptable to the Imams of the Ahl al-Bayt (A). In the sermons of the Nahj al-balaghah and other Shi'i compilations of hadith the idea that the Book and the Sunnah are not adequate has been vehemently :rejected. In the Usul al-Kafi, the chapter followed by another entitled

The chapter about referring to the Book and the Sunnah, and that verily there is no haram or halal and nothing needed by the people that is not present in the Book or the .Sunnah

The second reason advanced by the Shi'ah against qiyas was that it was based on conjecture and led very frequently to error. These two reasons clearly stand out in the books of early Shi'ah scholars, and we shall abstain from further details for .brevity's sake

The best evidence of the fact that the Shi'ah opposition to qiyas and ra'y was not based on a hostility to

the role of reason in canonical matters is that, from the very beginning that the Shiah jurisprudence was committed to writing, reason was considered one of the sources (adillah) of law. The Shi'ah jurisprudent stated that the sources of the Shari'ah are four: the Book, the Sunnah, ijma' and 'aql (reason), whereas the Zahiris and the Ahl al-Hadith confined the adillah to the Book, the Sunnah and ijma', and the supporters of .ra'y and qiyas regarded them as four: the Book, the Sunnah, ijma' and qiyas

The Shi'ah jurisprudent, while opposing qiyas and ra'y, accepted the Mu'tazilah viewpoint about the rational basis of ethico-legal judgements, defended it and did not oppose it like the Asha'irah and the Ahl al-Hadith. The concurrence of views between the Shi'ah and the Mu'tazilah regarding this doctrine and its corollaries - such as the doctrine of Divine justice - led the Shi'ah among the Mu'tazilah to be known as 'Adliyyah and the Shi'ah left behind the Mu'tazilah in their support of the doctrine of Divine justice. As a result, it came to be said in scholarly circles that: “justice and ”.tawhid are 'Alawid and fatalism and anthropomorphism are Umayyad

The reason for calling justice 'Alawid was that the supporters of the Ahl al-Bayt (A) were also defenders of the doctrine of al-husn wa al-qubh al-'aqliyyan and the doctrine of justice was a corollary to it. As to tawhid being 'Alawid, it was on account of .the belief in the unity of Divine Essence and Attributes

The Umayyads supported jabr (fatalism) and tashbih (anthropomorphism) due to political exigencies. The issue of the independent capacity of reason to perceive the good and evil of things, and the subsidiary doctrine of justice, became so much a characteristic of the Shi'ah that justice came to be recognized as one of the principal .tenets of the Shi'ite creed

That the Shi'ite opposition to ra'y and qiyas is not to be taken to have been an opposition to the role of reason in ijtihad becomes completely obvious when we examine the extant documentary evidence. At the present the Shi'ah state the principle of the interrelation of Divine laws and actual benefits and harms and the :principle of harmony between reason and religious law in these words

.Whatever is the judgement of reason, is also the judgement of the Shari'ah

This is an incontrovertible axiom of Shi'ite jurisprudence. The above discussion makes it clear that the Shi'ah Imamiyyah approach to ijtihad was an independent one: it was neither bound to ra'y and qiyas, nor did it impose any bounds on reason in the manner .of the Ahl al-Hadith

The Imamiyyah jurists on the one hand recognized the rights of reason and regarded it as one of the sources of law, on the other hand they rejected qiyas and ijtihad bi al-ra'y in their books on jurisprudence, in chapters devoted to qiyas. However, it would have been in order if the latter scholars had followed the ancient ones in discussing qiyas and ra'y in

.their works

It would have helped to define the exact limits of the prohibited form of qiyas, which would have been better understood. This would have prevented some individuals .from waging a battle against reason under the pretext of opposition to qiyas

In fact it would have been better for scholars to devote a separate chapter to reason and rational grounds in their works on jurisprudence, in which they could delineate more precisely the role of reason and also discuss, secondarily, the inadmissibility of qiyas. In view of this author, the absence of any discussion by the latter scholars about the inadmissible form of qiyas and the limits of the role of reason in legislation .has been more or less detrimental to Shi'ah fiqh and ijtihad

We should know that the great secret of Islam, from the viewpoint of the Imams of the Ahl al-Bayt (A), is the principle that the general laws of the Book and the Sunnah are sufficient for satisfying the religious needs of Muslims for all time, and that they have no need of ra'y and qiyas. It is characteristic of all Islamic laws that they are not only not hinder-some to human progress in any era, but are conducive to it by guiding .and directing it in the right direction

All that is needed to grasp this great secret is to have an enlightened and firm grasp of the vital issues. This great secret of the resourcefulness of Islam can also be called 'the great

secret of ijtihad'. To be certain, if an independent chapter were devoted to the above topic in books on jurisprudence, some of the existing contradictions and constraints in the relationship between fiqh and progress would have been eliminated. This problem requires an independent study and here we shall abstain from going into further .details

In the course of history, those Sunni schools of fiqh which were more rigid and formalistic and allowed lesser role to reason in deduction of laws, either disappeared gradually or the number of their followers diminished. The Zahiris, who followed Dawud ibn 'Ali, became altogether extinct. The Hanbali school, which after the Zahiri is the most rigid and formalistic of Sunni schools, gradually lost followers, and had it not been for the appearance of Ibn Taymiyyah, who provided the material on which Wahhabism was later to thrive, perhaps today the number of followers of the Hanbali .school would have been very small

The school of Malik spread only in North Africa and Maghrib, away from the centers of Islamic culture, and, as Ibn Khaldun says, the cause of the spreading of the school of Malik in North Africa and Maghrib was that the inhabitants were Bedouins who lived away from the centers of science and culture. In any case, the rigid and formalistic .Sunni schools declined and lost followers with the passage of time

Akhbarism in the Imamiyyah Tradition

One of the most surprising as well as regrettable phenomena was the emergence of Akhbarism among the Shi'ah in the early eleventh/seventeenth

century. Akhbarism was a hundred times more rigid and formalistic than either the Zahiri or the Hanbali school. Its emergence must be considered a great catastrophe in the Shi'ah world whose effects more or less survive to the present day, causing .stagnation and obscurantism in the Shi'ah Muslim society

The founder of Akhbarism was Mulla Amin Astarabadi, who expounded his beliefs in his famous book Fawa'id al-madaniyyah. Mulla Amin, as his book shows, was a brilliant and learned man. In general, those who found a school, no matter how baseless, rigid and false its teachings may be, are brilliant and intelligent men. A dullard cannot found a school and gather followers around himself. The dullards, .however, are influenced by those brilliant individuals and become their loyal followers

Amin Astarabadi claims to have discovered some truths which nobody before him had succeeded in knowing. Also, he claims a kind of Divine inspiration for himself; in the :introduction to the Fawa'id al- madaniyyah, he says

And you (i.e. the reader), after having gone through our book, will find in it truths untouched by any of the early or latter philosophers, legists, scholastics, and jurisprudent, and yet they are only a sample of what my Lord, the Almighty and the .Supreme, has granted to me

In this book he challenges even the philosophers and the mutakallimun, as occasionally he has to discuss some issues related to philosophy and kalam. In the book's tenth chapter, he discusses the meaning of nafs al-'amr. The eleventh chapter

is named by him “Fi bayan aghlat al-'Asha'irah wa al-Mu'tazilah fi awwal al-wajibat” (“On the mistakes of the Ashai'rah and the Mu'tazilah about the first obligations”). In .the twelfth, he cites the mistakes of Muslim philosophers and theologians

Amin Astarabadi under different pretexts, tried to deny the legal authority (hujjiyyah) of three of the four well-known sources of law, that is, the Quran, ijma', and 'aql, thus recognizing only the Sunnah as the reliable source. As to the Quran, he claimed that .no one has the right to refer directly to the Quran and to interpret it

Only the Infallible Imams have such a right. Our duty is to refer to their ahadith. Only those parts of the Quran that have been explained in hadith may be referred to for legal purposes; other parts whose exegesis does not exist in hadith may not be acted upon. Also in order to deny the authenticity of the text of the Quran, Amin Astarabadi .(raised the issue of its corruption (tahrif

As to ijma', he denied its validity, considering it an innovation (bid'ah) of the Sunnis. He also offered many arguments to deny the authority of reason. On the contrary, with respect to ahadith he went to the other extreme and claimed that all the traditions, especially those of al-Kafi, Man la yahdruruhu al-faqih, al-Tahdhib and al-'Istibsar are of certain authenticity and legally binding. He ferociously attacked al- 'Allamah al-Hilli, who had classified traditions into sahih, muwaththaq, hasan, and da'if, and occasionally insults

.the 'Allamah and his followers in his book

He categorically rejected the very principle of Ijtihad (even in its latter sense in which the Shi'ah fuqaha' had accepted it) and regarded it as an innovation in the faith. No one has any right to follow anyone except an infallible Imam, he claimed. He brought the entire force of his opposition to bear against reason and its authority. He claimed that all innovations involving reason - such as regarding Ijtihad as legitimate, considering the zawahir (apparent meanings of the Quranic verses) to be of binding authority, classifying ahadith into weak and strong, inquiring into the reliability of transmitters of ahadith and the like - came into vogue because the fuqaha' have followed the practitioners of qiyas, the scholastics, philosophers, and logicians to rely .upon reason

Now, if Mulla Amin were to prove that reason is liable to error except in matters relating to objects of sense - experience or those which are derived from it (such as the concepts of mathematics), the fuqaha' would no longer go after Ijtihad and reason. Accordingly, he advanced rather forceful arguments to disprove the authority of reason in matters which are not perceptual or derived from sense-experience. He is especially keen to prove that metaphysics and theology, since they are based on pure reasoning, are devoid of any value; hence the title of the twelfth chapter of the :Fawa'id al-madaniyyah

On part of the errors of philosophers and Muslim theosophist (hukama') in their sciences and that

their cause-as we have proved earlier-is that no one who deals with the issues whose preliminaries are extra-sensible is secure from error except the Infallible Ones (the Prophet [S], Fatimah [A], and the twelve Imams [A]).

There, he discusses some well-known problems of philosophy, such as the necessity of an intervening rest between two reciprocating straight line motions, that something which is necessarily associated with some impossibility is also impossible, the problem of precedence, and the problem of the preponderance of will.

On the whole, he is of the opinion that reason can be a guide only in the study of problems related to the natural sciences, which are based upon sense-experience, and in that of mathematics, whose concepts are derived from such experience or are closely related to it, but not in problems of theology and metaphysics. This view agrees totally with the outlook of the European empiricists of the sixteenth century.

Incidentally, the period in which Astarabadi lived approximately coincides with that of the emergence of empiricism in Europe. It is not known whether his views were original or he had borrowed them. All that we know about him at the present is that he lived in Makkah for nearly ten years where he studied under Muhammad Astarabadi, to whom he refers as a faqih, a mutakallim, and philosopher. After that he had spent several years at al-Madinah. But we know nothing about how he came to adopt those views, whether he had innovated them or had borrowed them

.from someone else

Amin Astarabadi himself, and his followers as well, do not consider him as the founder of a new school called Akhbarism. Rather they consider him a revivalist who restored the way of the early Shi'ah scholars of hadith. They claim that their way is the same as that of the early Shi'ah that was followed until the times of al-Shaykh al-Saduq and from which the people were gradually led astray by such scholars as Ibn Abi 'Aqil, Ibn Junayd, al-Shaykh al-Mufid, al-Sayyid al-Murtada, and al-Shaykh al-Tusi, who .brought in reason and ijtihad to temper with Divine commands

Shaykh Yusuf ibn Ahmad al-Bahram (d. ۱۱۸۶/۱۷۷۲), the author of al-Hada'iq al-nadrah, who was himself a moderate Akhbari, in the tenth muqaddimah of al-Hada'iq al-nadrah, under a heading style "Fi hujjiyyat al-dafiil al-'aqli" (On the legal validity of rational grounds), cites the following words of Sayyid Ni'mat Allah al-Jaza'iri from the :latter's work Anwar al-nu'maniyyah

To be certain, a majority of our companions (i.e. the Shi'ah) followed a group of our opponents, among them philosophers. naturalists, or Ahl al-Ra'y and others, who, relying upon reason and its arguments. cast away the teachings of the prophets when .they did not agree with their intellects

In these words, which hint at excommunication, Sayyid Ni'mat Allah al-Jaza'iri considers the majority of Shi'ah scholars - and along with them the philosophers, the naturalists, and those who follow ra'y and qiyas to be heedless of the teachings of prophets, merely on the ground that they recognize

the authority of reason. By the 'majority' he means all the scholars who came after al-.Shaykh al-Saduq, as if until that time all Shi'ah had been Akhbaris

In fact Akhbarism had never existed before as a school with distinct doctrines such as those based on the denial of the authority of the zawahir of the Quran, the denial of the authority of reason, impermissibility of the taqlid of anyone except the Ma'sum .and so on

It is true that there were some who seldom went beyond quoting traditions in their books - even quoting them verbatim in their fatawa. But the fact is that the abundance of ahadith on the one hand, and the accessibility to the Imams of the Ahl al-Bayt (A) on the other, had been the major cause that the need for ijtihad and the .need to deduce particular rules from general laws had not yet been felt

Al-Shaykh al-Tusi, in the introduction to al-Mabsut, says: "I had heard from the 'Ammah (i.e. the Sunnis) the criticism that our fiqh is limited because we do not practice qiyas and ra'y and is therefore also inadequate for answering all the .problems

For years I had been desirous of writing a work on legal deduction without having recourse to qiyas and ra'y, deducing in it particular rules (furu') from the fundamental general principles (usul) that we have been taught in traditions. However, various :preoccupations and hindrances prevented it." Then he adds

My determination was weakened further by the absence

of any desire on the part of this sect (i.e. the Imamiyyah) towards it and their indifference in this regard; because they have compiled the traditions which they relate with their familiar vocabulary, to the extent that if in a problem different words to which they are not used to are employed to convey the same sense, they consider .it as an odd thing

Al-Tusi makes it clear that the biggest impediment in his writing of such a book was that it was not yet customary among the Shi'ah to practice ijtihad and to deduce .particulars from universals

As said before, there had not emerged any great jurist until that time who could officially practice ijtihad and deduce particular rules from the general principles. There had been some - such as al-Shaykh al-Saduq, Ibn al-Walid, and others - whose method was based on narration of traditions, not on a discursive study of the subject. .Even if they wrote any book on kalam, their argument consisted mainly of traditions

It was they whom al-Shaykh al-Tusi calls 'muqallidah' (imitators) and criticizes them. Al-Sayyid al-Murtada - as quoted in the introduction to al-Sara'ir by Ibn Idris - refers to them as ashasb al-hadith min ashabina (the 'ahl al-hadith' from among our companions), and al-'Allamah al- Hilli, in Tahdhib al-'usul, calls them 'al-'akhbariyyun .(min ashabina' (the 'akhbaris'-traditionists-from among our companions

Perhaps it is on this account that al-Shahristani, in al-Milal wa al- nihal,divides the Imamiyyah into the sub sects of mu'tazilah and akhbaris. In the

:first volume of his work, he says

When there came to be divergence in the traditions narrated from their Imams, as time passed every group of them took its own way, and some of the Imamiyyah became either Mu'tazilah, or Waidiyyah, or Tafdiliyyah, or Akhbariyyah, or .Mushabbihah, or Salafiyyah

However, it is quite certain and definite that in the early era there was no school opposed to that of ijtihad and legal deduction amongst the Shi'ah to have challenged the authority of the zawahir of the Quran or the authority of reason in order to defend .hadith

The appearance of Akhbarism, as I have said before, was a catastrophe for the scientific and intellectual life of the Shi'ah. Many individuals came to adopt its teachings and came to look down upon reason and rationalism. They made reflection upon the Quran a taboo and, instead of making the Quran the criterion for the .acceptability of hadith, made hadith a criterion for the Quran

Fortunately there emerged eminent personalities among the mujtahidun and usulis who fought the influence of the Akhbaris. Among them the names of Wahid Behbahani and Shaykh Murtada al-'Ansari - may God elevate their station - stand high. To describe in detail the services of these two personages is beyond the scope .of the present study

By the way, it should not remain unsaid that the struggle against Akhbarism was a difficult and complex matter because its teachings took a deceptive and self-righteous stance which misled the public. It was

for this reason that they rapidly gained influence and popularity after Amin Astarabadi ...

As is known, there broke out severe and bloody conflict towards the end of the second/eighth century and the beginning of the third/ninth between the Ahl al-Hadith wa al-Sunnah, who resemble the Shi'ah Akhbaris, and the Mu'tazilah, who believe in the role of reason and the validity of rational arguments. Al-Ma'mun (r. ١٩٨-٢١٨/٨١٣-٨٣٣), who was personally a man of learning, supported the Mu'tazilah and backed them in the controversy about the creation of the Quran.

He sent out a circular declaring those who denied the creature-hood of the Quran as heretics, who had no right to be judges and preside over the courts of law nor was their testimony to be accepted in the courts. As a result the Mu'tazilah attained great power during al-Ma'mun's reign. More philosophical works than at any other time were translated into Arabic during al-Ma'mun's reign and rationalism became prevalent when al-Mutawakkil (r. ٢٣٢-٢٤٧/٨٤٦-٨٦١) came to power, he reversed the tide by throwing the weight of his support behind the Ahl al-Hadith. The Mu'tazilah were proscribed and the publication of philosophy was banned. Al-Mas'udi, in Muruj al-dhahab, writes:

When the caliphate fell to al-Mutawakkil, he ordered the people to abstain from discussion and debate and whatever they were used to in the days of al-Mu'tasim and al-Wathiq. He directed them to adopt compliance and imitation.

Al-Mutawakkil's support for the Ahl al-Hadith wa al-Sunnah - who like the Shi'ah Akhbaris had a

deceptively self-righteous stance, spoke untiringly of submission and devotion and persistently chanted the phrase qala Rasul Allah ('so said the Apostle of Allah') - had an extraordinary effect on the people, to whom it appeared to be a defence of the Prophet. For this reason, al-Mutawakkil, despite his tyranny and debauchery, came to .assume saintly image in the popular mind

The Mu'tazilah could never recover from that blow. And we, the Shi'ah, should thank God that there arose no Mutawakkil in the era of the emergence of the Shi'ah Akhbaris, who were a hundred times more obscurantists and formalistic than the Ahl .al-Hadith wa al-Sunnah, in their defence

However, we should note the point that even though the Akhbari onslaught was defeated through the courageous resistance of a number of the followers of the .school of ijtihad, but the Akhbari thinking was not completely destroyed

Whenever the champions of ijtihad have made any headway and wherever they have put their feet, Akhbari thinking had to recede and disappear. But Akhbari .obscurantism still rules in those places where they were not able to reach

How often we come across mujtahids who do ijtihad with an Akhbari brain. Many of the kind of things which are published in the name of the 'teachings of the Ahl al-Bayt' and come to the market, but which strike dagger into the back of the Ahl al-Bayt of the Prophet (S), are no more than the remnants of the thought of Mulla Muhammad .Amin Astarabadi

About center

In the name of Allah

هَلْيَسْتَوِيالَّذِينَيَعْلَمُونَوَالَّذِينَلَايَعْلَمُونَ

?Are those who know equal to those who do not know

al-Zumar: ۹

:Introduction

Ghaemiyeh Computer Research Institute of Isfahan, from ۲۰۰۷, under the authority of Ayatollah Haj SayyedHasanFaqihImami (God blesses his soul), by sincere and daily efforts of university and seminary elites and sophisticated groups began its activities .in religious, cultural and scientific fields

:Manifesto

Ghaemiyeh Computer Research Institute of Isfahan in order to facilitate and accelerate the accessibility of researchers to the books and tools of research, in the field of Islamic science, and regarding the multiplicity and dispersion of active centers in this field

and numerous and inaccessible sources by a mere scientific intention and far from any kind of social, political, tribal and personal prejudices and currents, based on performing a project in the shape of (management of produced and published works from all Shia centers) tries to provide a rich and free collection of books and research papers for the experts, and helpful contents and discussions for the educated generation and all classes of people interested in reading, with various formats in the .cyberspace

:Our Goals are

(propagating the culture and teachings of Thaqalayn (Quran and Ahlulbayt p.b.u.t-

encouraging the populace particularly the youth in investigating the religious issues-

replacing useful contents with useless ones in the cellphones, tablets and computers-

providing services for seminary and university researchers-

spreading culture study in the publich-

paving the way for the publications and authors to digitize their works-

:Policies

acting according to the legal licenses-

relationship with similar centers-

avoiding parallel working-

merely presenting scientific contents-

mentioning the sources-

.It's obvious that all the responsibilities are due to the author

:Other activities of the institute

Publication of books, booklets and other editions-

Holding book reading competitions-

Producing virtual, three dimensional exhibitions, panoramas of religious and tourism- places

.Producing animations, computer games and etc-

Launching the website with this address: www.ghaemiyeh.com-

Fabricatingdramatic and speech works-

Launching the system of answering religious, ethical and doctrinal questions-

Designing systems of accounting, media and mobile, automatic and handy systems,- web kiosks

Holding virtual educational courses for the public-

Holding virtual teacher-training courses-

Producing thousands of research software in three languages (Persian, Arabic and- English) which can be performed in computers, tablets and cellphones and available and downloadable with eight international formats: JAVA, ANDROID, EPUB, CHM, PDF, HTML, CHM, GHB on the website

Also producing four markets named "Ghaemiyeh Book Market" with Android, IOS,- WINDOWS PHONE and WINDOWS editions

:Appreciation

We would appreciate the centers, institutes, publications, authors and all honorable .friends who contributed their help and data to us to reach the holy goal we follow

:Address of the central office
Isfahan, Abdorazaq St, Haj Mohammad JafarAbadei Alley, Shahid Mohammad HasanTavakkoly Alley, Number plate ۱۲۹, first floor
Website: www.ghbook.ir
Email: Info@ghbook.ir
Central office Tel: ۰۳۱۳۴۴۹۰۱۲۵
۰۲۱ ـ Tehran Tel: ۸۸۳۱۸۷۲۲
Commerce and sale: ۰۹۱۳۲۰۰۰۱۰۹
Users' affairs: ۰۹۱۳۲۰۰۰۱۰۹

Introduction of the Center – Ghaemiyeh Digital Library


Center of Computer
Researches
Ghaemiyeh
Isfahan
For Getting Other Professional Libraries,
refer to the Center Address Please:
www.Ghaemiyeh.com
www.Ghaemiyeh.net
www.Ghaemiyeh.org
www.Ghaemiyeh.ir
For Order, Connect us:
0913 2000 109